

Patent Application
Attorney Docket No.: 26283-4

REMARKS

The following remarks are in response to the Office Action mailed on July 13, 2005. After entry of this amendment, claims 1, 2, 4, 5, 7-9, and 11-23 will remain pending in this application.

In the Office Action, claims 1-3 and 8-10 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Berman et al., U.S. Patent No. 5,995,939 (hereinafter "Berman"). Claims 4-6, 11-15 and 20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Berman in view of the Environmental Protection Agency's Envirofacts Warehouse publication (hereinafter "EPA Query Form"). Claims 7 and 16-19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Berman in view of the publication to Snodgrass et al. entitled "Taking Infrastructure Management Systems Into the Next Century" (hereinafter "Snodgrass"). Response is hereby made to each of these rejections.

As an preliminary matter, it should be noted that to advance prosecution of this application, Applicant has herein cancelled, without prejudice, claims 3, 6 and 10. It should be understood that Applicant does not necessarily agree with the Examiner's rejections of these claims. As such, Applicant reserves the right to pursue claims 3, 6 and 10, or claims having a scope consistent with each of claims 3, 6 or 10, in a continuation application.

Also as a preliminary matter, it should be noted that claim 4 has herein been amended to make explicit that which was previously implicit, namely that the permit database of private onsite wastewater treatment systems includes a record of each of the plurality of private onsite wastewater treatment systems for which a permit has been issued.

Independent claims 1 and 8 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Berman. In responding

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to Applicant's earlier arguments regarding claim 1, the Examining Attorney stated (see page 2 of the Office Action):

"Applicant states the method of claim 1 involves indirect communication via the recited host computer system, however, it is noted that the features upon which applicant relies are not recited in the rejected claim. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims."

In response, Applicant has herein amended claim 1 (and claim 8) to make explicitly clear that which was previously implicit, namely that unlike the system of Berman, each of these claims involves indirect communication between a plurality of third parties requesting private onsite wastewater treatment system service and a plurality of third parties providing private onsite wastewater treatment system service. More specifically, claim 1 has been amended herein to specifically require that the claimed method involve "receiving at a host computer system, private onsite wastewater treatment system service requests from a plurality of third party private onsite wastewater treatment system owners, each of which is seeking to have their own private onsite wastewater treatment system serviced" and further involves "from each assigned third party private onsite wastewater treatment system service provider, receiving at the host computer system, a private onsite wastewater treatment system service report describing services performed in response to each third party private onsite wastewater treatment system service request assigned to the service provider."

Likewise, claim 8 has herein been amended to require that the host computer system is configured to "receive private onsite wastewater treatment system service requests from a

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plurality of third party private onsite wastewater treatment system owners, each of which is seeking to have their own private onsite wastewater treatment system serviced" and further, the host computer system is configured "to receive from each assigned third party private onsite wastewater treatment system service provider, a private onsite wastewater treatment system service report describing services performed in response to each third party private onsite wastewater treatment system service request assigned to the service provider."

Thus, claims 1 and 8 as amended now clearly distinguish over the system of Berman in that each of these claims require that the same host computer system be capable of receiving service requests from one third party group (private onsite wastewater treatment system owners) and service reports in response to the service requests from a second third party group (private onsite wastewater treatment system service providers). Because Berman does not teach or suggest a method or system wherein a single host computer system receives both third party service requests and service reports as required by amended claims 1 and 8, claims 1 and 8 are not obvious in view of Berman alone and claims 1 and 8 should be allowed.

Claims 2-7 and 9-19, which each depend from an allowable base claim, each add a limitation to the base claim from which they depend and therefore are narrower in scope than the allowable base claim from which they depend. Each of these claims is therefore also allowable. Although each of claims 2-7 and 9-19 are allowable because they each depend from an allowable base claim, each of these claims is also allowable because they each contain a limitation that patently distinguishes them over Berman.

With respect to claims 2 and 9 for example, each of these claims was rejected under 35 U.S.C. § 103(a) as being unpatentable over Berman. In making the rejection of these two

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claims, the Examining Attorney stated that Berman teaches providing the host computer with a notification site in the form of mail server 14 and that the service providers are notified of service requests assigned to them via the notification site.

It is true that Berman teaches the use of a mail server 14 connected to a client computer system 10 and sponsor computer system 12 via a computer network 16 (see column 3, lines 40-48). The mail server 14 of Berman, however, is not located on, or hosted by, the client computer 10 or the sponsor computer 12 of Berman. To the contrary, the mail server 14 of Berman is a separate computer system connected to the client and sponsor computers via telephone or high speed data lines 46 (see column 5, lines 14-23). In fact, according to Berman, mail server 14 is provided by a commercial third party Internet provider (see column 4, lines 60-67). Thus, Berman actually teaches away from having a host computer system that includes or hosts a notification site for a plurality of service providers as required by claims 2 and 9 since Berman teaches the use of a third party computer system for such purpose.

Because Berman does not teach or suggest a method or system as required by claims 2 and 9, each of these claims is also not obvious in view of Berman alone and each of these claims should also be allowed.

Claims 4, 5, 11-15 and independent claim 20 were each rejected under 35 U.S.C. § 103(a) as being unpatentable over Berman in view of the EPA Query Form. With respect to claims 4, 11, 12, 13, 15 and 20, each of these claims include a host computer system that either has access to a private onsite wastewater treatment system permit database or includes a private onsite wastewater treatment system permit database. Berman alone does not teach or suggest such a limitation. Since Berman does not teach or suggest such a limitation, the Examining Attorney turns to the EPA Query Form for such teachings.

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In rejecting these claims, the Examining Attorney states that the EPA Query Form "offers a database search tool on the Internet wherein a user can search through issued permits regarding wastewater systems." Applicant respectfully disagrees with the Examining Attorney for the following reasons. The EPA Query Form does not teach or suggest the ability to search through issued wastewater treatment system permits. Rather, the EPA Query Form simply makes reference to the ability to search a database for facility information, including whether or not a particular facility is in compliance with its "water discharge permit." A database containing information as to whether or not a particular facility is in compliance with its water discharge permit is not necessarily a database that contains issued permit information. For example, such a database could simply identify if a facility is in compliance at any given time or it could simply contain information with regards to when and how often a particular facility was in and out of compliance with its water discharge permit. Neither of these examples involve the ability to actually search a database of issued permits.

In addition to not teaching or suggesting the use of a database that contains issued permit information, the EPA Query Form also does not teach or suggest the use of a private onsite wastewater treatment system database. The only reference in the EPA Query Form to water is a references to discharge water. Systems that discharge water are not necessarily private onsite wastewater treatment systems. In fact, there are many systems other than wastewater treatment systems that discharge water.

Because the EPA Query Form does not teach or suggest the use of a private onsite wastewater treatment system permit database as required by claims 4, 11, 12, 13, 15 and 20, the combination of Berman with the EPA Query Form can not render claims 4, 11, 12, 13, 15 and 20 obvious and each of these claims should also be allowed.

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With respect to claims 5 and 14, each of these claims is also allowable over the cited prior art for the same reasons, *inter alia*, that claims 2 and 9 are allowable over the prior art, namely that Berman teaches away from a host computer that includes, or hosts, notification sites and instead teaches the use of third party computer systems to host notification sites.

Claims 7 and 16-19 were each rejected under 35 U.S.C. § 103(a) as being unpatentable over Berman in view of Snodgrass. With respect to claim 7, the Examining Attorney stated that Berman does not teach or suggest the following limitations from claim 7:

- (1) providing the host computer system with access to a service history database containing a service history for each of a plurality of private onsite wastewater treatment systems;
- (2) establishing a service event threshold for each of the plurality of private onsite wastewater treatment systems included in the service history database;
- (3) having the host computer system monitor the service history database to determine if the service event threshold for any one of the plurality of private onsite wastewater treatment systems is exceeded; and
- (4) having the host computer system notify an appropriate governmental agency if the service event threshold for any one of the plurality of private onsite wastewater treatment systems is exceeded.

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Thus, in order to support the rejection of claim 7, the Examining Attorney relies on Snodgrass. The problem with relying on Snodgrass is that Snodgrass also does not teach or suggest any of the missing limitations identified above.

In basing the rejection of claim 7 on Snodgrass, the Examining Attorney states simply that Snodgrass:

" . . . teaches an infrastructure management system to analyze historical data for public utilities such as water wherein preventive maintenance schedules for line repair and maintenance are monitored (page 2, bottom). The computerized maintenance management system (CMSS) schedules and tracks preventive maintenance tasks. Inherently, the CMSS has thresholds establishing when maintenance tasks are required and tracks their completion, which would also include notification of maintenance left incomplete. The incorporation of a maintenance threshold monitoring feature into Berman et al.'s assignment of service requests would allow for a more efficient system of responding to service problems since it would be evident when certain services or maintenance is required."

(see Office Action, page 8)

Based on this language, it is clear that the Examining Attorney relies on a contention that the CMSS system of Snodgrass must inherently "establish service event thresholds." Applicant respectfully disagrees with the Examining Attorney. After carefully reviewing Snodgrass, Applicant could find nothing inherent in Snodgrass that teaches or suggests any of the missing limitations, including the limitation requiring the "establishment of service event thresholds."

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Furthermore, not only is the Examining Attorney's reliance on an inherent characteristic in this case incorrect, it is also improper because it lacks adequate support. MPEP § 2112 clearly states:

The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) (reversed rejection because inherency was based on what would result due to optimization of conditions, not what was necessarily present in the prior art); *In re Oelrich*, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981). "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.' " *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999).

"In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent

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characteristic necessarily flows from the teachings of the applied prior art." *Ex parte* Levy, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original).

In this case, there simply is nothing in Snodgrass that teaches or suggests that the systems and methods of Snodgrass necessasarily "establish service event thresholds." Furthermore, the Examining Attorney's has not provided any "basis in fact and/or technical reasoning" to reasonably support her position that the allegedly inherent characteristic necessarily flows from the teachings of Snodgrass. Without such support, the Examining Attorney's rejection of claim 7, and the rejections of claims 16-18, which are based on the same rationale, are without merit and adequate support and should be withdrawn.

With respect to claim 19, this claim is also allowable over the cited prior art for the same reasons, *inter alia*, that claims 2 and 9 are allowable over the prior art, namely that Berman teaches away from a host computer that includes a notification site and instead teaches the use of third party computer systems to host notification sites.

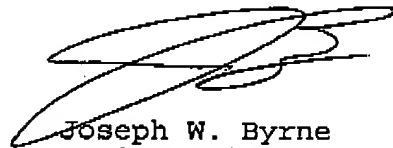
Finally, Applicant has herein amended the application to include new claims 21-23. Each of these claims adds a limitation to an allowable claim and therefore is narrower in scope than the allowable claim from which it depends. In addition, each of these claims contains a limitation that patently distinguishes it over the prior art, including the prior art of record. Therefore, each of these added claims is also allowable.

Accordingly, in view of the above amendments and remarks, Applicant respectfully submits that the application should be allowed. The Examiner is invited to telephone the

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undersigned below if it will aid in the prosecution of this application.

Respectfully submitted,



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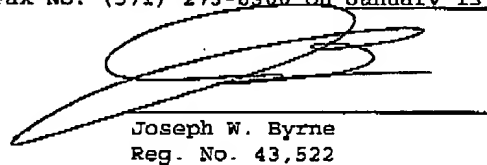
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Date: January 13, 2006



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